for Reporting Whistle Blowing Complaints" to address her whistleblowing claims. Palmer, 107 Cal.App. 4th at 903. This is clearly *not* what was represented to Petitioner. No response to the grievance was received for 7 weeks and at that time she was told she could *not* file whistleblowing allegations under the PPSM, but could permissively re-file under a separate set of procedures, but, *"[a]lleged violations of state and federal laws will be excluded from the complaint resolution process."* Petition, supra, 4. Though inconsistent with what Respondent's administrators represented, Palmer is consistent with what Petitioner argued in the Courts, below. Specifically, the Exhaustion Doctrine applies only when *internal* disclosures regarding *improper governmental activity* are made under UC policy, thereby constituting an *exclusively internal* UC affair and implicating the policies of the Exhaustion Doctrine. Again, where a whistleblower is already injured after "*disclosing information to a government or law enforcement agency*" (App. F, supra, at 69a), the matter is no longer *exclusively* an internal UC affair but one requiring *uniform treatment* under the law. *Going back* to exhaust internal procedures that were never triggered in the first place was clearly never intended by the Legislature after 1992 in view of its amendment to §1102.5 (PBM 37-39) which *equally* vested similarly situated whistleblowers with the right to access a court of law, whether injured by a private employer, public or one of a self-spun, arrogantly-touted *fourth branch of government*. App. F, supra, at 72a.

In response to being judicially noticed of the legislative history of the 1992 bill amending § 1102.5, to eliminate the Exhaustion Doctrine for its purposes, the CSC acknowledged the Legislature's intent to "*extend the rights available to private employees to include public employees.*" App. A, supra, at 22a. The analytical thread was then dropped, however, when the CSC proceeded to thwart said purpose by

concluding the *rights extended* do not include timely access to a court of law under the judicial remedy afforded. Petitioner's argument that she is being denied equal protection of the laws in a field where the Legislature never intended this result, thus, remains. Reply Brief on the Merits 13.

C. **The Keepers and the Kept**. Another issue under this bureaucratic success story was raised in an Amicus Brief where bias and due process concerns were raised, (Amicus Brief of E. Lyn Lemaire at 5-7); JUSTICE HOLMES famous phrase, "*even a dog distinguished between stumbled over and being kicked,*" quoted, (citation) (Ibid. at 9); and the substantial "*chilling*" effect and sense of hopelessness and futility of reporting violations of law *within* and *outside* the UC discussed. Ibid. at 9-10. These glaring issues were again glossed over by Respondent's counsel, who argued that the "*sweeping assertions of bias are unfounded,*" and that internal procedures "*need not include all of the procedural trappings of formal court proceedings to satisfy constitutional due process requirements.*" Answer to Amicus Brief at 3-4. Furthermore, it was argued that any rule requiring disqualification for pecuniary compensation "*would make it difficult or impossible for the government to provide hearings which it is constitutionally required to hold,*" (Ibid. at 5) - again neglecting to note how very different any autonomous UC campus is from *the government, the government* being bound by clear jurisdictional parameters and substantive and procedural safeguards apparently confined in California to only *three* of its branches.

At best, this story also raises the theme noted by JUSTICE STEVENS and JUSTICE O'CONNOR along with a majority of the Court in Cleavinger v. Saxner (1985) 474 U.S. 193 - the "*old situational problem of the relationship between the keeper and the kept,*" one hardly, "*conducive to a truly adjudicatory performance*" by "*direct subordinates*" of a

warden "*under obvious pressure to resolve a disciplinary dispute in favor of the institution and their fellow employee.*" Id. at 204.

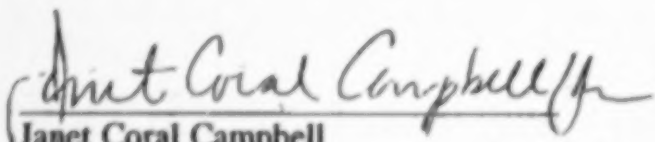
II. CONCLUSION

In view of the serious nature of the allegations and constitutional rights at stake, the judgment below should be reversed not only on the ground that the subject matter was outside Respondent's jurisdiction because it wasn't *exclusively* a university affair but overlapped with a statewide interest requiring uniformity of treatment, but also because the Exhaustion Doctrine shouldn't have been applied to thwart the Legislature's intent to provide a judicial remedy. Even if the Legislature hadn't amended §1102.5, the Exhaustion Doctrine should be inapplicable in view of the lack of substantive and procedural safeguards, as well as inherent bias within each autonomous campus. Finally, this Court should grant this Petition as this is not a case where the resulting denial of equal protection for UC whistleblowers or the "*burden*" of the Lower Courts' error compounded over decades should be placed on the "*shoulders*" of the Cal. Legislature (Monell v. Dept. of Social Services (1978) 436 U.S. 658, 695), which has already acted in attempt to afford UC whistleblowers protection under the law. This is a bureaucratic success story written with the concurrence of the California judiciary which should now be read under the light of the Equal Protection Clause, perhaps affording the opportunity to write a happier or at least more carefully considered ending, which only this Court can provide.

This Court should grant the Petition for Writ of Certiorari.

III. RULE 44.1 CERTIFICATION

Petitioner hereby certifies that the foregoing Petition for Rehearing of *Campbell v. Regents of Univ. of California* No. 05-233 is presented in good faith and not for purposes of delay.



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